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Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Applications for Consent to Transfer Control of Filed by Verizon Communications, Inc. and MCI, Inc.*, WC Docket No. 05-75 –REDACTED**

Dear Ms. Dortch:

The latest ex parte presentation[1] submitted by Global Crossing repeats the same claims made in prior filings in this proceeding.[2] As MCI and Verizon previously demonstrated, those claims are misplaced and must be rejected.[3]

For example, Global Crossing again lumps Verizon and SBC together in making claims about its "in-region special access spend,"[4] as if Verizon and SBC were combining, not Verizon and MCI. As we have explained, Global Crossing's own data show that SBC receives **[BEGIN CONFIDENTIAL] **** [END CONFIDENTIAL]** as much of Global Crossing's "access spend" as Verizon.[5] Those data also show that MCI, which Global Crossing understandably no longer mentions in this context, accounts for less than **[BEGIN CONFIDENTIAL] ***** **[END CONFIDENTIAL]** of the amount Global Crossing claims to pay to SBC, AT&T, Verizon, and MCI. Thus, Global Crossing's data in no way suggest that the combination of Verizon and MCI will reduce competition in the market as a whole, or even that it will have a material effect on Global Crossing.

Global Crossing also repeats claims about the extent to which "AT&T and MCI" serve high-capacity customers.[6] We have already addressed those claims, which are based on the misimpression that this transaction involves AT&T and MCI, not Verizon and MCI.[7] Indeed, the

[1] *See* Ex Parte Letter from Teresa D. Baer, Latham & Watkins LLP, to Marlene H. Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (FCC filed Sept. 7, 2005) ("Global Crossing Sept. 7, 2005 Ex Parte").

[2] *See* Ex Parte Letter from Teresa D. Baer, Latham & Watkins LLP, to Marlene H. Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (FCC filed June 2, 2005) ("Global Crossing June 2, 2005 Ex Parte").

[3] *See* Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, FCC, WC Docket No. 05-75 (FCC filed July 1, 2005) ("Verizon/MCI July 1, 2005 Ex Parte").

[4] *Compare* Global Crossing Sept. 7, 2005 Ex Parte at 2 *with* Global Crossing June 2, 2005 Ex Parte at 7.

[5] *See* Verizon/MCI July 1, 2005 Ex Parte at 1-2.

[6] *Compare* Global Crossing Sept. 7, 2005 Ex Parte at 3 *with* Global Crossing June 2, 2005 Ex Parte at 8-9.

[7] *See* Verizon/MCI July 1, 2005 Ex Parte at 2-3.

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data we have submitted clearly show that MCI is not a unique source of facilities-based competition to individual buildings in those limited areas in Verizon's region where it has deployed its competing fiber facilities.[8]

Global Crossing also repeats its prior claims — and reprints the same charts allegedly supporting those claims — regarding Verizon's special access prices.[9] We have already addressed those claims at length.[10] In any event, all of these arguments are already being addressed by the Commission in other, industry-wide rulemaking proceedings and should not be addressed here.[11] In addition, Global Crossing continues to fail to demonstrate any transaction-specific issues related to special access rates, terms, and conditions, despite the Commission's recognition that the only relevant issue in the context of a merger proceeding is whether the transaction somehow creates materially greater risk of discrimination in those rates, terms, and conditions.[12]

For these reasons, Global Crossing has not come close to undermining the showing by Verizon and MCI that this transaction, on balance, serves the public interest. Therefore, there is no basis for the Commission to impose conditions on the combination of Verizon and MCI. In any event, the specific condition that Global Crossing now proposes — "baseball" arbitration to establish both price and non-price terms for all dedicated access services purchased from Verizon or MCI — is fundamentally incompatible with the Commission's regime for regulating special access and must be rejected.

More than fifteen years ago, the Commission rejected the role of directly setting prices for special access services. Instead, it has allowed carriers to set prices, subject to cap, and gradually removed some restrictions in response to increased competition. The Commission has an ongoing docket to evaluate what further modifications to pricing regulations of special access are appropriate.[13] Global Crossing's proposal would circumvent that rulemaking, and just for those ILECs seeking merger approval, impose direct price regulation. Moreover, it would do so in a manner that would impose burdens on both regulated companies and the Commission.

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[8] *See* Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene H. Dortch, FCC, WC Docket No. 05-75, at 4-7 (FCC filed Sept. 9, 2005) ("Verizon/MCI Sept. 9, 2005 Ex Parte").

[9] *Compare* Global Crossing Sept. 7, 2005 Ex Parte at 3 *with* Global Crossing June 2, 2005 Ex Parte at 14, 16.

[10] *See* Verizon/MCI July 1, 2005 Ex Parte at 3-5.

[11] *See, e.g.*, Memorandum Opinion and Order, *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent To Transfer Control*, 19 FCC Rcd 21522, ¶ 183 (2004) (explaining that it is "more appropriate[]" to address concerns regarding special access in "our existing rulemaking proceedings on special access performance metrics and special access pricing" so that the Commission may "develop a comprehensive approach based on a full record that . . . treats similarly-situated incumbent LECs in the same manner").

[12] *See* Memorandum Opinion and Order, *Applications of Pacific Telesis Group and SBC Communications, Inc. for Consent To Transfer Control*, 12 FCC Rcd 2624, ¶ 54 (1997); Memorandum Opinion and Order, *Qwest Communications International Inc. and US WEST Inc., Applications for Transfer of Control*, 15 FCC Rcd 5376, ¶ 42 (2000).

[13] *See* Order and Notice of Proposed Rulemaking, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, FCC 05-18 (rel. Jan. 31, 2005).

Since 1999, the Commission has regulated Verizon's and other LECs' interstate special access rates, terms, and conditions through two different regulatory regimes: price caps, which date back to 1990, and pricing flexibility, which was instituted in 1999. The Commission granted pricing flexibility to local exchange carriers to enable them to "respond to the advent of competition" in the market for the high-capacity services provided over special access facilities, recognizing that, "[a]s the market becomes more competitive, [the] constraints [of price cap regulation] become counter-productive."[14] Regardless of whether a LEC is subject to price cap or pricing flexibility regulation in a particular MSA, it must file the rates, terms, and conditions on which it offers interstate special access with the Commission, and must provide those same offers to other carriers. In addition, federal law and/or FCC regulations prohibits Verizon (and other BOCs) from charging higher rates for special access to competing carriers than it charges itself and also from offering a new contract tariff for special access service to one of its affiliates until Verizon certifies to the Commission that an unaffiliated customer is already purchasing service pursuant to that contract tariff.[15]

Global Crossing, however, proposes replacing these uniform rules with special rules applicable only to Verizon and SBC — and not to BellSouth, Qwest, and other price cap LECs — under which every sale of special access to every carrier could be subject to "baseball" arbitration by a single arbitrator, with review by the Commission and presumably the federal courts.[16]

Global Crossing attempts to justify this extraordinary imposition of direct price regulation by arguing that such a condition is comparable to the commercial arbitration requirement imposed on News Corp.'s acquisition of control over DirecTV and other entities,[17] but the two situations differ significantly.

First , News Corp. was not subject to the same type of overarching regulatory scheme that Global Crossing seeks to disrupt here. To the extent Global Crossing argues that existing

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[14] *See* Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, 14 FCC Rcd 14221, ¶¶ 14, 19 (1999) ("*Pricing Flexibility Order*"), *aff'd, WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

[15] *See* 47 U.S.C. § 272(e)(1), (3); 47 C.F.R. § 69.727(a)(2)(iii).

[16] *See* Global Crossing Sept. 7, 2005 Ex Parte at 4-7. Given Global Crossing's proposal of review by the Commission, it appears that Global Crossing envisions the arbitrator operating as a *de facto* administrative law judge, rather than a true commercial arbitrator under the Federal Arbitration Act ("FAA"), which provides for extremely limited review of arbitration awards, and only in federal court. *See* 9 U.S.C. §§ 1-14. In that case, the Commission would have to provide *de novo* review of the arbitrator's conclusions in order to comply with the D.C. Circuit's ruling prohibiting subdelegations outside the agency. *See USTA v. FCC*, 359 F.3d 554, 566-68 (D.C. Cir. 2004), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004). To the extent Global Crossing does envision actual commercial arbitration under the FAA, the Commission has no authority to compel a party to submit to such arbitration. As the Supreme Court has repeatedly held, commercial arbitration is "'a matter of consent, not coercion.'" *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) (quoting *Volt Info. Scis., Inc. v. Board of Trustees*, 489 U.S. 468, 479 (1989)); *see also AT&T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 648-49 (1986) ("[A]rbitrators derive their authority to resolve disputes *only because the parties have agreed* in advance to submit such grievances to arbitration."(emphasis added)).

[17] *See* Global Crossing Sept. 7, 2005 Ex Parte at 4.

special access regulation is inadequate, Global Crossing has the ongoing rulemaking as the appropriate forum to raise those claims.

Second, in the *Hughes/News Corp. Order*,[18] the commercial arbitration requirement applied only to the price that cable companies would pay for access to News Corp.'s regional sports network ("RSN") programming.[19] This was a single service that was uniquely impacted by the transaction. Here, in contrast, Global Crossing's proposal would extend to all of the many facilities and services that Verizon offers in its special access tariffs.

Third, because of the broader scope and higher volume of agreements, commercial arbitrations under Global Crossing's proposal would be more frequent and vastly more complicated than under the *Hughes/News Corp. Order*. And because all of these arbitrations would be appealable to the Commission, there is no merit to Global Crossing's assertion that this process would "[a]void[] burdening the Commission with responsibility for ratemaking and regulatory oversight,"[20] especially as compared to the existing price cap and pricing flexibility regime, which does not require review of special access rates, terms, and conditions on a purchaser-by-purchaser basis.

Fourth, unlike the programming offered by News Corp., Verizon's special access is a common carrier service, which means that any arbitration award would have to be tariffed and would remain available to other carriers. Thus, carriers would have the incentive to use the arbitration process to ratchet-down Verizon's special access rates, terms, and conditions, as any "wins" by a carrier would presumably be available to other carriers as a contract tariff. "Losses," on the other hand, would at most affect only the arbitrating carrier, in the event that it were not permitted to purchase from another available tariff, rather than from its arbitrated contract. This would not "[r]eplicate[] commercial market forces," as Global Crossing asserts.[21]

Finally, the Commission mandated commercial arbitration for the narrow subset of RSN programming only after determining that the Hughes/News Corp. transaction involved a "*unique combination* of News Corp.'s RSN programming assets and DirecTV's nationwide distribution platform" and that its existing "program access rules" would not be "sufficient to protect against the[] likely *transaction-specific* harms."[22] In the context of this transaction, however, there is nothing unique about the combination of Verizon and MCI, nor has Global Crossing (or any other commenter) shown any transaction-specific harms with respect to Verizon's rates, terms, and conditions for special access.

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[18] Memorandum Opinion and Order, *General Motors Corp. and Hughes Electronics corp. and The News Corp. Ltd. for Authority to Transfer Control, 19* FCC Rcd 473 (2004) ("*Hughes/News Corp. Order*").

[19] *See id.* ¶ 177.

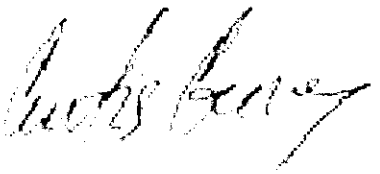
[20] Global Crossing Sept. 7, 2005 Ex Parte at 4.

[21] *Id.*

[22] *Hughes/News Corp. Order* ¶¶ 147, 172 (emphases added).

In sum, Global Crossing has not demonstrated the need for any conditions on Verizon's sales of special access as a result of this transaction, much less the specific condition it now proposes.

Sincerely,



Dee May
Verizon

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cc: Julie Veach
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